

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

JEFFREY DALE PHILLIPS &
CHRISTINA LEE PHILLIPS,

Debtors.

CASE NO.: 19-30566-KKS
CHAPTER: 7

KEN ARNOLD

Plaintiff,

ADV. NO.: 19-03009-KKS

v.

JEFFREY DALE PHILLIPS &
CHRISTINA LEE PHILLIPS

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON ISSUE OF NON-DISCHARGEABILITY
AS TO JEFFREY DALE PHILLIPS (DOC. 69)**

THIS MATTER is before the Court on Plaintiff's *Motion for Partial Summary Judgment on Issue of Non-Dischargeability as to Jeffrey Dale Phillips* ("Summary Judgment Motion," Doc. 69). To date, Defendants have not filed a response. For the reasons that follow, the Summary Judgment Motion is due to be denied.

BACKGROUND

The following facts are not in dispute. Defendants commenced a voluntary Chapter 7 bankruptcy case on May 15, 2019.¹ Prior to the bankruptcy case, Defendant, Jeffrey Dale Phillips (“Mr. Phillips”) ran and operated a business as a sole proprietorship by the name of Affordable Marine Service (“Affordable Marine”).²

On September 24, 2015, Plaintiff took a 1993 Hydrotech marine vessel with two Honda 225 HP motors (“Vessel”) to Affordable Marine for care and the installation of electronic and mechanical hardware.³ According to Plaintiff, a fire destroyed the Vessel on June 20, 2016.⁴ Plaintiff sued “Jeffrey Phillips d/b/a Affordable Marine Service” in 2016 and received a Final Judgment against Mr. Phillips in the amount of \$122,922.50 on January 30, 2019.⁵ That Final Judgment also ordered Mr. Phillips to surrender the Vessel to Plaintiff within twenty (20) days, failing which the Clerk was to issue a writ of possession for the Vessel and trailer in favor of Plaintiff.⁶ Nothing in the Final Judgment mentions a

¹ *Voluntary Petition for Individuals Filing for Bankruptcy, In re Phillips*, No. 19-30566-KKS (Bankr. N.D. Fla. 2019), Doc. 1.

² *Id.* at p. 33.

³ *Amended Complaint for Nondischargeability of Debt*, Doc. 3 at ¶ 7 (“Amended Complaint”).

⁴ *Id.* at ¶ 9.

⁵ *Id.* at ¶ 14.

⁶ Doc. 3-1, p. 2.

fire or destruction of the Vessel, nor does that document address any allegations made prior to its entry that Mr. Phillips willfully and maliciously destroyed the Vessel.⁷

PROCEDURAL HISTORY

Plaintiff commenced this Adversary Proceeding on July 16, 2019 by filing a three-count Complaint seeking denial of both Defendants' discharges pursuant to 11 U.S.C. §§ 727(a)(1) and (2) and a determination that the judgment debt is not dischargeable pursuant to 11 U.S.C. § 523(a)(6).⁸ Defendants filed an Answer on August 15, 2019.⁹ On February 5, 2020, Defendants' counsel moved to withdraw, citing irreconcilable differences;¹⁰ the Court granted that motion on February 26, 2020.¹¹

Defendants were uncooperative in discovery throughout this adversary proceeding, leading Plaintiff to file a motion to compel, the Court to order Defendants to respond to discovery, and Plaintiff to file a *Motion*

⁷ Curiously, the Final Judgment appears to negate the fact that the Vessel had already been destroyed by fire. If that was the case in 2016, it is difficult to comprehend why in 2019 the state court ordered Defendant to return the Vessel to Plaintiff, failing which the Clerk would issue a writ of replevin.

⁸ *Complaint for Nondischargeability of Debt*, Doc. 1. Plaintiff filed the Amended Complaint on July 17, 2019.

⁹ *Answer to Complaint for Nondischargeability of Debt*, Doc. 7 ("Answer").

¹⁰ *Motion to Withdraw as Attorney for Debtor*, Doc. 14.

¹¹ *Order Granting Motion to Withdraw as Attorney for Debtor*, Doc. 20.

for Sanctions.¹² Plaintiff's Motion for Sanctions requested the Court dismiss Defendants' Chapter 7 administrative case with prejudice and award other sanctions.¹³ On August 13, 2020, the Court entered an order granting the Motion for Sanctions in part and issued the following sanctions:

With respect to any future dispositive motion(s), trial or evidentiary hearing in this adversary proceeding, Defendants Jeffrey Dale Phillips and Christina Lee Phillips:

1. Are prohibited from raising any affirmative defenses;
2. Are prohibited from introducing any documentary evidence other than any document they have produced to Plaintiff as of the date of this Order; and
3. Are prohibited from offering any witnesses or any form of testimonial evidence beyond testimony they gave at their depositions in this proceeding.¹⁴

Plaintiff filed his first summary judgment motion on April 16, 2020.¹⁵ The Court denied that summary judgment motion.¹⁶ By that ruling, the Court dismissed Count I of the Amended Complaint, denial of

¹² Plaintiff's *Motion to Compel Debtors' Discovery Responses and Depositions and for Sanctions* (Doc. 27). Defendants did not respond to the motion to compel. On June 2, 2020, the Court entered an *Order Granting, in Part, Plaintiff, Ken Arnold's Motion to Compel Debtor's Discovery Responses and Depositions*, Doc. 37. That order required Defendants to provide responses to interrogatories within fourteen (14) days and make themselves available for depositions within twenty-one (21) days. Plaintiff's *Motion for Sanctions*, Doc. 46.

¹³ Doc. 46.

¹⁴ *Order Granting, in Part, Plaintiff's Motion for Sanctions*, Doc. 50.

¹⁵ Plaintiff's *Motion for Summary Judgment on Issue of Non-Dischargeability*, Doc. 32.

¹⁶ *Order Denying Plaintiff's Motion for Summary Judgment on Issue of Non-Dischargeability*, Doc. 41.

discharge under § 727(a)(1), against both Defendants.¹⁷ The Court also dismissed Count II, non-dischargeability for willful and malicious injury under § 523(a)(6), against Defendant, Christina Lee Phillips (“Ms. Phillips”) and denied summary judgment on Count II without prejudice as to Mr. Phillips.¹⁸ As to Count III, denial of discharge pursuant to 11 U.S.C. § 727(a)(2), the Court denied the motion without prejudice as to both Defendants.¹⁹

In the current Summary Judgment Motion, Plaintiff requests the Court to enter summary judgment against Mr. Phillips pursuant to 11 U.S.C. § 523(a)(6). Plaintiff alleges that Mr. Phillips intentionally set fire to the Vessel and seeks a determination that his debt to Plaintiff is not dischargeable for that reason.

DISCUSSION

Summary Judgment Standard

Summary judgment is proper “if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law.”²⁰ A fact is material if it “might affect

¹⁷ *Id.* at ¶ 1. a.

¹⁸ *Id.* at ¶ 1. b.

¹⁹ *Id.* at ¶ 1. c.

²⁰ Fed. R. Civ. P. 56(a) made applicable by Fed. R. Bankr. P. 7056.

the outcome of the suit under governing law;”²¹ and “[t]he moving party has the burden to demonstrate the absence of a genuine issue of material fact.”²² “[T]he evidence and inferences drawn from the evidence are viewed in the light most favorable to the nonmoving party, and all reasonable doubts are resolved in his favor.”²³ Because a genuine issue of material fact remains as to whether Mr. Phillips willfully or maliciously caused the fire that destroyed the Vessel, the Summary Judgment Motion is due to be denied.

Plaintiff has not met his burden to show that Mr. Phillips caused injury under 11 U.S.C. § 523(a)(6).

The Bankruptcy Code excepts from a debtor’s discharge any debt “for willful and malicious injury *by the debtor* to another entity or to the property of another entity” pursuant to 11 U.S.C. § 523(a)(6).²⁴ As this Court noted in its previous order denying summary judgment, “[t]he party seeking a determination under this section bears the burden to demonstrate that *the debtor* committed an intentional act for the purpose

²¹ *In re Phillips*, Adv. No.: 19-03009-KKS, 2020 WL 4001038 at *2 (Bankr. N.D. Fla. June 12, 2020) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

²² *Phillips*, 2020 WL 4001038 at *2 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)).

²³ *Phillips*, 2020 WL 4001038 at *2 (quoting *WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th Cir. 1988)).

²⁴ 11 U.S.C. § 523(a)(6) (2020) (emphasis added).

of causing injury or with the knowledge that injury was substantially certain to result.”²⁵

In support of the Summary Judgment Motion Plaintiff attached an affidavit of Daniel Cole, who attests to be a certified Marine Surveyor with the National Association of Marine Surveyors and a member of the International Association of Arson Investigators.²⁶ Mr. Cole testifies in his Affidavit that in his opinion “the fire that destroyed [Plaintiff’s] Vessel was intentional and not an accident.”²⁷ However, neither Mr. Cole’s Affidavit nor any other affidavit or document filed in support of Plaintiff’s Summary Judgment Motion links Mr. Phillips to the act of intentionally setting the fire that destroyed the Vessel. Instead, the Amended Complaint and allegations in the Summary Judgment Motion as to who set the fire are mere conjecture:

The day before [Plaintiff] Arnold was scheduled to pick up the Vessel, the Vessel mysteriously caught on fire at J. Phillips [*sic*] facility. . . . The source of the fire was the Vessel. *See* Affidavit of Daniel Cole *It is believed* [Defendant] J. Phillips intentionally set fire to the Vessel in order to cover up the fact that he had not progressed as indicated and had overcharged [Plaintiff] Arnold for the work to date. J. Phillips disputed this by stating that the fire was caused by the marine

²⁵ *Phillips*, 2020 WL 4001038 at *2 (citing *In re Jennings*, 670 F.3d 1329, 1334 (11th Cir. 2012)) (emphasis added).

²⁶ *Affidavit in Support of Motion for Summary Judgment*, Doc. 69-2.

²⁷ *Id.* at ¶ 9.

electronics provided by [Plaintiff] Arnold [T]he electrical components had not been installed on the Vessel and therefore could not have been the cause of the fire J. Phillips [*sic*] only defense, that the fire was caused by the electronics provided by [Plaintiff] Arnold, is now conclusively refuted²⁸

Plaintiff summarizes his argument in favor of nondischargeability under Section 523(a)(6) by alleging: “[a]ll evidence . . . supports the conclusion [Defendant] J. Phillips intentionally set fire to the Vessel to cover up the fact that he had collected payment for work that had not been completed.”²⁹ But no evidence before the Court supports that conclusion.

It is true that no one, including Mr. Phillips, disputes that the Vessel was destroyed by fire. Similarly, Mr. Cole’s opinion that the fire was not accidental is unrefuted. But even Mr. Cole does not attempt to guess who deliberately set the fire.³⁰ In short, not one scintilla of evidence proves the most vital material fact: that the Debtor, Mr. Phillips, set the fire. Plaintiff’s belief or conclusion that he did is not enough.

²⁸ Doc. 3, ¶ 13 (“It is believed J. Phillips intentionally set fire to the Vessel”); Doc. 69, ¶¶ 7, 8, 9, 19, & 21 (emphasis added).

²⁹ *Id.* at ¶24.

³⁰ The Court does not describe Mr. Cole as an expert witness because Plaintiff has not tendered, nor has the Court accepted, Mr. Cole as an expert witness. *See*, Rule 702, Federal Rules of Evidence.

Because nothing before the Court shows, much less proves, an essential element of 11 U.S.C. § 523(a)(6)³¹: that the Debtor, Mr. Phillips, set the fire that destroyed the Vessel, thereby causing “willful and malicious injury,” Plaintiff’s Summary Judgment Motion must be denied.

For the reasons stated, it is

ORDERED:

- 1) The *Motion for Partial Summary Judgment on Issue of Non-Dischargeability as to Jeffrey Dale Phillips* (Doc. 69) is DENIED.
- 2) The hearing on the Summary Judgment Motion, currently scheduled for December 9, 2020, is CANCELED.

DONE and ORDERED on December 4, 2020.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Attorney for Plaintiff is directed to serve a copy of this Order on interested parties and file a Proof of Service within three (3) days of this Order.

³¹ 11 U.S.C. § 523(a)(6) (2020).